No. 17-5554

In the Supreme Court of the United States

DENARD STOKELING, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether petitioner's prior conviction for robbery, in violation of Fla. Stat. § 812.13 (1995), was a conviction for a "violent felony" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e), because that offense "has as an element the use, attempted use, or threatened use of physical force against the person of another," 18 U.S.C. 924(e)(2)(B)(i).

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OPINION BELOW

The opinion of the court of appeals (J.A. 28-40) is not published in the Federal Reporter but is reprinted at 684 Fed. Appx. 870.

JURISDICTION

The judgment of the court of appeals was entered on April 6, 2017. On June 12, 2017, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including August 4, 2017, and the petition was filed on that date. The petition for a writ of certiorari was granted on April 2, 2018. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-28a.

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Florida, petitioner was convicted of possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1). J.A. 20. He was sentenced to 73 months of imprisonment, to be followed by two years of supervised release. J.A. 21-22. The court of appeals vacated the sentence and remanded for resentencing. J.A. 28-40.

1. Concerned that "a 'large percentage' of crimes of theft and violence" were "'committed by a very small percentage of repeat offenders,'" Congress enacted the Armed Career Criminal Act of 1984 (ACCA) to "supplement the States' law enforcement efforts against 'career' criminals." *Taylor* v. *United States*, 495 U.S. 575, 581 (1990) (quoting H.R. Rep. No. 1073, 98th Cong., 2d Sess. 1 (1984) (1984 House Report)); see Pub. L. No. 98-473, Tit. II, ch. 18, 98 Stat. 2185 (18 U.S.C. App. 1202(a) (1982 & Supp. II 1984)) (repealed in 1986 by the Firearms Owners' Protection Act (FOPA), Pub. L. No. 99-308, § 104(b), 100 Stat. 459). As originally enacted, the ACCA prescribed a 15-year minimum sentence for any person who received, possessed, or transported a firearm in commerce following three prior convictions "for robbery or burglary." 18 U.S.C. App. 1202(a) (1982 & Supp. II 1984).

Congress focused on robbery and burglary because it viewed those offenses as "the most common violent street crimes." S. Rep. No. 190, 98th Cong., 1st Sess. 5 (1983) (1983 Senate Report). The original version of the ACCA defined robbery as "any felony consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person

will imminently be subjected to bodily injury." 18 U.S.C. App. 1202(c)(8) (Supp. II 1984). In 1986, Congress amended the definition of robbery by replacing "bodily injury" with "bodily harm" and "any felony" with "any crime punishable by a term of imprisonment exceeding one year." FOPA § 104(a)(4), 100 Stat. 458.

Later in 1986, Congress amended the ACCA again, "expand[ing] the predicate offenses triggering the sentence enhancement from 'robbery or burglary' to 'a violent felony or a serious drug offense.'" *Taylor*, 495 U.S. at 582; see Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39. Senator Specter, who sponsored a bill that was one of the sources of the amendment, explained that because the ACCA "ha[d] been successful with the basic classification of robberies and burglaries as the definition for 'career criminal,'" the "time ha[d] come to broaden that definition so that we may have a greater sweep and more effective use of this important statute." *Taylor*, 495 U.S. at 583 (quoting 132 Cong. Rec. 7697 (1986)). The updated language did not list robbery explicitly as a predicate offense, but included an "elements clause," *Welch* v. *United States*, 136 S. Ct. 1257, 1261 (2016), which covered any offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another," 18 U.S.C. 924(e)(2)(B)(i). The House Report accompanying the ACCA explained that the language of the elements clause would encompass both "robbery" and other crimes, like "murder, rape, [and] assault," that "involv[e] physical force against a person." H.R. Rep. No. 849, 99th Cong., 2d Sess. 3 (1986) (1986 House Report); see *id.* at 4.

Specifically, the amended version of the statute, which remains in effect today, applies its enhanced penalty to a defendant who is convicted of unlawful possession, transportation, or receipt of a firearm under 18 U.S.C. 922(g), and who has three prior convictions for a "violent felony or a serious drug offense, or both, committed on occasions different from one another." 18 U.S.C. 924(e)(1). It defines a "violent felony" as:

> any crime punishable by imprisonment for a term exceeding one year * * * that—
>
> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another, or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

18 U.S.C. 924(e)(2)(B).

2. In 2015, two people burglarized the Tongue & Cheek restaurant in Miami Beach, Florida. D. Ct. Doc. 30, at 1 (Mar. 2, 2016). Petitioner worked at the restaurant, and the police identified him as a suspect. *Ibid.* Police officers subsequently approached petitioner as he was reporting to work and asked whether he had any weapons on him. *Id.* at 1-2. Petitioner stated that he had a gun in his backpack and handed the backpack to the officers. *Id.* at 2. The officers found a semi-automatic firearm, a magazine, and 12 rounds of ammunition. *Ibid.* A federal grand jury in the Southern District of Florida indicted petitioner on one count of possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1), and petitioner pleaded guilty to that offense, J.A. 20.

The Probation Office recommended that petitioner be sentenced as an armed career criminal under the ACCA because he had three prior convictions "for a violent felony or serious drug offense," 18 U.S.C. 924(e)(1). Presentence Investigation Report (PSR) ¶ 17. Those convictions included a 1997 conviction for robbery, in violation of Fla. Stat. § 812.13 (1995). PSR ¶ 25; see J.A. 10. Under Florida law, robbery is defined as "the taking of money or other property * * * from the person or custody of another, * * * when in the course of the taking there is the use of force, violence, assault, or putting in fear." Fla. Stat. § 812.13(1) (1995).

At sentencing, the district court focused on the "factual background" of petitioner's robbery conviction. Sent. Tr. 10; see PSR ¶ 25. As recounted by the Probation Office, and repeated by the court, petitioner and an accomplice had approached the victim while she was walking outside. PSR ¶ 25. Petitioner had "grabbed her by the neck and tried removing her necklaces" as she "held onto" them. *Ibid.* Petitioner's accomplice had then "grabbed [the necklaces] from her neck" and given them to petitioner. *Ibid.*; see Sent. Tr. 10. The court viewed the factual background provided by the Probation Office as insufficient "to justify an enhancement" under the ACCA, Sent. Tr. 11, and sentenced petitioner to 73 months of imprisonment, *id.* at 23.

3. The court of appeals vacated petitioner's sentence and remanded for resentencing. J.A. 28-40.

a. The court of appeals noted the parties' agreement that the district court had "erroneously looked to the underlying facts" of petitioner's robbery offense to make its own circumstance-specific judgment about whether his prior conviction was a violent felony under the ACCA. J.A. 30. The court of appeals explained that the

district court should have instead "applied the 'categorical approach,' which 'looks only to the elements of the crime.'" *Ibid.* (brackets and citation omitted); see *Mathis* v. *United States*, 136 S. Ct. 2243, 2248 (2016) (discussing categorical approach).

Applying that approach, the court of appeals determined that "a conviction under the Florida robbery statute categorically qualifies as a violent felony under the elements clause of the [ACCA]." J.A. 29 (citing *United States* v. *Fritts*, 841 F.3d 937, 938, 943-944 (11th Cir. 2016), cert. denied, 137 S. Ct. 2264 (2017), and *United States* v. *Dowd*, 451 F.3d 1244, 1255 (11th Cir.), cert. denied, 549 U.S. 941 (2006)). The court observed that "[a]n element of Florida robbery is 'the use of force, violence, assault, or putting in fear,' Fla. Stat. § 812.13, which requires 'resistance by the victim that is overcome by the physical force of the offender.'" J.A. 31 (quoting *Robinson* v. *State*, 692 So. 2d 883, 886 (Fla. 1997)). That "force element," the court explained, "satisfies the elements clause of the [ACCA]." *Ibid.*

b. Judge Martin concurred. J.A. 31-40. She agreed that petitioner's conviction, which postdated a 1997 decision by the Supreme Court of Florida that clarified the elements of robbery, necessarily involved enough "force" to qualify as an ACCA predicate. J.A. 32, 40. But she interpreted Florida decisional law between 1976 and 1997 to have allowed a robbery conviction for "conduct involving minimal force," like the "sudden snatching" of a purse, which she did not view as sufficient "force" under the ACCA's elements clause. J.A. 38-40.

SUMMARY OF ARGUMENT

The court of appeals correctly determined that petitioner's prior conviction for robbery, in violation of Fla. Stat. § 812.13 (1995), was a conviction for a violent

felony under the ACCA's elements clause, 18 U.S.C. 924(e)(2)(B)(i).

A. The ACCA's elements clause encompasses "any crime" punishable by imprisonment for more than one year that "has as an element the use * * * of physical force against the person of another." 18 U.S.C. 924(e)(2)(B)(i). In *Johnson* v. *United States*, 559 U.S. 133 (2010), this Court construed the phrase "'physical force'" in that clause to mean "force capable of causing pain or injury." *Id.* at 140.

The force required by Florida's robbery statute satisfies that definition. "[I]n order for the snatching of property from another to amount to robbery" under that statute, "there must be resistance by the victim that is overcome by the physical force of the offender." *Robinson* v. *State*, 692 So. 2d 883, 886 (Fla. 1997). A simple purse-snatching or pocket-picking does not count; instead, a physical contest between the offender and the victim is inherent in the crime. And the force required to prevail in such a contest—*i.e.*, "force sufficient to overcome a victim's resistance," *id.* at 887—is necessarily "force capable of causing physical pain or injury," *Johnson*, 559 U.S. at 140.

The history of the ACCA confirms that robbery offenses like Florida's satisfy the elements clause. As originally enacted in 1984, the ACCA listed only two predicate offenses, and robbery was one of them. The definition of robbery in the original version of the ACCA was drawn from the common law and therefore encompassed robbery offenses like Florida's, which is drawn from the same source. When Congress expanded the ACCA's predicate offenses in 1986, it did so by taking the defining aspect of its preexisting definition of "robbery"—namely, "force or violence," 18 U.S.C. App.

1202(c)(8) (Supp. II 1984)—and making it the basis for the new and more general elements clause. The term "force" in the elements clause is thus most naturally understood to incorporate the meaning it had in the common-law definition of robbery, with common-law robbery as the paradigmatic elements-clause offense. Construing that clause to require even more violence than was necessary for common-law robbery would not only untether it from any relevant preexisting legal framework, but would also exclude from its scope the basic (*i.e.*, non-aggravated) robbery-by-force crime of nearly every State at the time of the clause's enactment.

B. Although petitioner acknowledges (*e.g.*, Br. 4, 11) that *Johnson* construed "physical force" in the elements clause to mean "force capable of causing pain or injury," he effectively asks this Court to rewrite that definition to eliminate Florida robbery as an ACCA predicate. But his request is premised on a misunderstanding of the definition set forth in *Johnson*. Contrary to his contention (Br. 12), that definition is not "limitless," but instead requires that a predicate offense contain some narrowing feature that ensures that the offense categorically involves "force capable of causing physical pain or injury." A battery statute that may be violated by a tap on the shoulder, without more, does not contain such a feature; a robbery statute that requires that the force be "sufficient to overcome a victim's resistance," *Robinson*, 692 So. 2d at 887, does. In any event, the Court in *Johnson* was aware of each of petitioner's proposed alternative formulations of "physical force" and did not adopt them.

C. The Court should also reject petitioner's expansive interpretation of Florida's robbery statute. This Court typically defers to regional courts of appeals on

matters that involve the construction of state law. Regardless, petitioner provides no sound basis for construing Florida's robbery offense more broadly than the court of appeals did. In each of the Florida robbery cases that petitioner identifies, the defendant used force capable of causing physical pain or injury.

ARGUMENT

PETITIONER'S FLORIDA ROBBERY CONVICTION WAS A CONVICTION FOR A VIOLENT FELONY UNDER THE ACCA'S ELEMENTS CLAUSE

Florida defines "robbery" as theft "by means of" either (1) "intimidation by assault or putting in fear" or (2) "force or violence." *Robinson* v. *State*, 692 So. 2d 883, 886 (Fla. 1997); see Fla. Stat. § 812.13(1) (1995). That offense is a "violent felony" under the ACCA because it "has as an element the use, attempted use, or threatened use of physical force against the person of another," 18 U.S.C. 924(e)(2)(B)(i). Petitioner does not dispute that the "intimidation" form of Florida robbery, which requires placing the victim in fear of bodily harm or injury, see, *e.g.*, *Brown* v. *State*, 397 So. 2d 1153, 1155 (Fla. Dist. Ct. App. 1981), categorically satisfies the ACCA's elements clause. And contrary to petitioner's contention, the "force or violence" form of Florida robbery, which requires "force sufficient to overcome a victim's resistance," *Robinson*, 692 So. 2d at 887, does as well. This Court has held that a defendant uses "'physical force'" within the meaning of the ACCA when he employs "force capable of causing physical pain or injury to another person." *Johnson* v. *United States*, 559 U.S. 133, 140 (2010). A defendant who has overpowered a defiant victim in order to take property has necessarily used such force. Petitioner's contrary interpretation of the ACCA cannot be squared with this Court's

precedents and would implausibly suggest that the elements clause, which expanded the original ACCA's reference to "robbery," in fact excluded nearly every State's basic (*i.e.*, non-aggravated) robbery-by-force offense.

A. Force Sufficient To Overcome A Victim's Resistance For Purposes Of Florida Robbery Is "Physical Force" Under The ACCA's Elements Clause

The ACCA's elements clause encompasses "any crime" punishable by imprisonment for more than one year that "has as an element the use * * * of physical force against the person of another." 18 U.S.C. 924(e)(2)(B)(i). In *Johnson* v. *United States*, *supra*, this Court "made clear that 'physical force'" in that context "means 'force capable of causing physical pain or injury.'" *Sessions* v. *Dimaya*, 138 S. Ct. 1204, 1220 (2018) (quoting *Johnson*, 559 U.S. at 140); see *Bond* v. *United States*, 134 S. Ct. 2077, 2091 (2014) (similar). Force sufficient to overcome a Florida robbery victim's resistance meets that definition.

1. The Court in *Johnson* construed the phrase "'physical force'" in the ACCA by reference to its "ordinary meaning" and statutory context. *Johnson*, 559 U.S. at 138.

The Court explained that the "adjective 'physical'" "plainly refers to force exerted by and through concrete bodies—distinguishing physical force from, for example, intellectual or emotional force." *Johnson*, 559 U.S. at 138. Given that the term "physical force" appeared in the context of defining the phrase "violent felony," the Court rejected a "specialized legal usage of the word 'force'" drawn from misdemeanor common-law battery, which would have included "even the slightest offensive touching." *Id.* at 139. It noted that the word "force," in "general usage," means "'power, violence, compulsion,

or constraint exerted upon a person.'" *Id.* at 138-139 (quoting *Webster's New International Dictionary* 985 (2d ed. 1954)) (brackets omitted).

The Court held that, in the ACCA's elements clause, "the phrase 'physical force' means *violent* force—that is, force capable of causing physical pain or injury to another person." *Johnson*, 559 U.S. at 140. The Court further suggested that physical force, as it had defined the term, "might consist * * * of only that degree of force necessary to inflict pain—a slap in the face, for example." *Id.* at 143. In arriving at its definition, the Court in *Johnson* explicitly referenced force associated with robbery. See *id.* at 139. In particular, the Court observed that *Black's Law Dictionary* "defines 'physical force' as 'force consisting in a physical act, esp. a violent act directed against a robbery victim.'" *Ibid.* (quoting *Black's Law Dictionary* 717 (9th ed. 2009)) (brackets omitted).

2. The force required under Florida's robbery statute satisfies *Johnson*'s definition of "physical force" under the ACCA.

The Supreme Court of Florida has explained that "in order for the snatching of property from another to amount to robbery, the perpetrator must employ more than the force necessary to remove the property from the person. Rather, there must be resistance by the victim that is overcome by the physical force of the offender." *Robinson*, 692 So. 2d at 886; see *Montsdoca* v. *State*, 93 So. 157, 159 (Fla. 1922) (explaining that robbery requires "such force as is actually sufficient to overcome the victim's resistance"); *Johnson*, 559 U.S. at 138 ("We are * * * bound * * * by the Florida Supreme Court's interpretation of state law."). Only where the crime includes "force sufficient to overcome a victim's

resistance," *Robinson*, 692 So. 2d at 887, can it "legitimately be said that a crime of violence against the person of another—which is inherent in every robbery—has occurred," *S.W.* v. *State*, 513 So. 2d 1088, 1091 (Fla. Dist. Ct. App. 1987).

Any such crime necessarily involves "force capable of causing physical pain or injury to another person," *Johnson*, 559 U.S. at 140. Whatever form the victim's resistance may take—*e.g.*, grabbing hold of a purse as the defendant tries to take it away, *McCloud* v. *State*, 335 So. 2d 257, 259 (Fla. 1976); attempting to keep a necklace around her neck as the defendant tries to tear it off, *Santiago* v. *State*, 497 So. 2d 975, 976 (Fla. Dist. Ct. App. 1986); or standing in front of a doorway as the defendant tries to escape with stolen goods, *Rumph* v. *State*, 544 So. 2d 1150, 1151 (Fla. Dist. Ct. App. 1989)—Florida's robbery statute requires that the defendant meet that resistance with force of his own. *Robinson*, 692 So. 2d at 886. A physical contest between the defendant and the victim is thus inherent in the offense. And the force required to prevail in such a contest—*e.g.*, by ripping the purse from the victim's grasp, *McCloud*, 335 So. 2d at 259; tearing the necklace from around the victim's neck, *Santiago*, 497 So. 2d at 976; or knocking the victim out of the way of the exit, *Rumph*, 544 So. 2d at 1151—is invariably "capable of causing physical pain or injury," *Johnson*, 559 U.S. at 140.

Indeed, the force required under Florida's robbery statute often *does* cause physical pain or injury to the victim. See, *e.g.*, *McCloud*, 335 So. 2d at 258 (victim "died as a result of a fall" during a struggle with the defendant over her purse); *Benitez-Saldana* v. *State*, 67 So. 3d 320, 322 (Fla. Dist. Ct. App. 2011) ("'tug-of-war'" over the victim's purse caused "an abrasion on the

victim's arm"); *Rigell* v. *State*, 782 So. 2d 440, 441-442 (Fla. Dist. Ct. App. 2001) (defendant "yanked" a purse from "the victim's shoulder, causing her to feel sharp pain" and breaking the purse strap); *Jones* v. *State*, 652 So. 2d 346, 350 (Fla. 1995) (per curiam) (defendant "stabbed [the victim] in the back, leaving her to die in the bathroom"); *Santiago*, 497 So. 2d at 976 (defendant "reached into the victim's car and tore two gold necklaces from around her neck * * * , leaving the victim with a few scratch marks and some redness around her neck"); *Bates* v. *State*, 465 So. 2d 490, 490-491 (Fla. Dist. Ct. App. 1985) (per curiam) (defendant "tore a diamond ring from one of [the victim's] fingers," causing "injur[y]"); *Mims* v. *State*, 342 So. 2d 116, 117 (Fla. Dist. Ct. App. 1977) (per curiam) (defendant "beat[]" the victim and "pushed [her] out of the car"). All that *Johnson* requires, however, is that the force be "capable" of causing such injury, which is true for every Florida robbery conviction.

A perpetrator who does not employ such force, and instead employs only "the force necessary to remove the property from the person," may be guilty of theft or larceny (or the post-1999 lesser crime of "[r]obbery by sudden snatching," Fla. Stat. § 812.131(1) (1999)), but is not guilty of robbery under Section 812.13. *Robinson*, 692 So. 2d at 886; see *Colby* v. *State*, 35 So. 189, 190 (Fla. 1903) ("Where one stealthily filches loose property from the pocket of another, and no more force is used than such as may be necessary to remove the property from the pocket, it is not robbery under the statute, but larceny."). Examples of "slight force" that would not support a robbery conviction include simple purse-snatching, pocket-picking, "snatching money from a person's hand," "grabbing a camera from a victim's shoulder,"

and the "stealthy taking of jewelry from a child during a game." *Robinson*, 692 So. 2d at 887 (citing cases); see *S.W.*, 513 So. 2d at 1090-1091 (explaining that "the only degree of force usually involved" in "a stealthy taking or sudden snatching of property" is "the slight amount of force necessary to physically remove the property from the person of another").

Florida's distinction between robbery and lesser theft offenses, based on the amount of force used in the commission of the crime, demonstrates that Florida robbery cannot be committed with "the slightest offensive touching," *Johnson*, 559 U.S. at 139, but instead requires an amount of force at least akin to "a slap in the face," *id.* at 143. See, *e.g.*, *Walker* v. *State*, 546 So. 2d 1165, 1166-1167 (Fla. Dist. Ct. App. 1989) (concluding that the defendant did not use "'force,' within the meaning of the robbery statute," even though the victim "felt his fingers on the back of her neck" as he took "her gold chain"). Just as "the 'force [or] violence' aspect of * * * robbery" has led state courts to describe it as "a crime of violence" rather than "just a theft," *S.W.*, 513 So. 2d at 1091, it likewise qualifies Florida robbery as a "violent felony" under the ACCA's elements clause, 18 U.S.C. 924(e)(2)(B)(i); see *Montsdoca*, 93 So. at 159 (explaining that "violence" is what distinguishes robbery from larceny).

3. The genesis and evolution of the ACCA confirm that robbery offenses like Florida's involve the "use * * * of physical force" under the ACCA's elements clause. 18 U.S.C. 924(e)(2)(B)(i). Indeed, they suggest that common-law robbery was the model elements-clause offense.

As previously noted, the original version of the ACCA prescribed a 15-year minimum sentence for any person convicted of certain firearms offenses following

three prior convictions for "robbery or burglary," 18 U.S.C. App. 1202(a) (1982 & Supp. II 1984), which were understood to be "the most common violent street crimes." 1983 Senate Report 5; see *id.* at 3 (referring to "[r]obbery" as a "violent crime"); 1984 House Report 3 (incorporating observation of Senator Specter that "[r]obberies involve physical violence or the threat thereof," with "30 percent" of them "result[ing] in physical injuries"). It defined "robbery" to include "any felony consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury." 18 U.S.C. App. 1202(c)(8) (Supp. II 1984).

That definition encompassed Florida robbery. The ACCA's language "adopt[ed] the terminology of common law robbery," under which it is "a crime to take property from another by force and violence, or by threatening or placing another person in fear." S. Rep. No. 307, 97th Cong., 1st Sess. 668 (1981) (1981 Senate Report); see *id.* at 671 ("This definition of the offense closely tracks the common law concept of robbery."); see also 1983 Senate Report 20 (cross-referencing discussion in 1981 Senate Report). In so doing, it incorporated "[t]he traditional requirement of a violent (as opposed to merely forceful) taking"—a requirement "designed to exclude those situations such as pickpocketing or removing property from a drunk or unconscious person, which do not pose special dangers of violence and, thus, are more appropriately dealt with as theft." 1981 Senate Report 671. That is precisely the line between sufficient and insufficient force drawn by Florida's robbery statute, which is likewise derived from the common

law. See *McCloud*, 335 So. 2d at 259; *Montsdoca*, 93 So. at 158-159; *Simmons* v. *State*, 25 So. 881, 882 (Fla. 1899).

Congress's subsequent enactment of the elements clause retained that same dividing line, while extending its applicability to both robbery and non-robbery felony offenses. See *Taylor* v. *United States*, 495 U.S. 575, 582 (1990) (explaining that the amendments "expanded the predicate offenses triggering the sentence enhancement"). In sponsoring one of the bills that led to that amendment, Senator Specter explained that "the[] original predicate offenses [of robbery and burglary] should continue to be included in the career criminal statute," but that it was "time" to give the statute "greater sweep" by amending it to "apply to career criminals whose prior offenses may be murder" or "rape." *Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary on H.R. 4639 and H.R. 4768: Armed Career Criminal Legislation*, 99th Cong., 2d Sess. 44, 46-47 (1986) (House Hearing); see 132 Cong. Rec. 7698 (1986) (same). Other Members of Congress expressed similar views. See House Hearing 8 (Rep. Wyden stating that it would be "a logical extension" of the ACCA to amend it to reach not just "a three-time bank robber," but also a "habitual offender with prior convictions for rape or murder"); *id.* at 2 (Rep. Hughes urging amendment of the ACCA to reach "murder, rape, assault, robbery, et cetera"—that is, "felonies involving physical force against a person").

Congress accordingly enacted an amendment, entitled "expansion of predicate offenses for armed career criminal penalties," that incorporated the prior terminology of the ACCA's "robbery" definition into a new and more general elements clause. Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I,

Subtit. I, § 1402, 100 Stat. 3207-39 (capitalization and emphasis omitted). The original version of the statute had defined "robbery" by reference to (*inter alia*) "force or violence," 18 U.S.C. App. 1202(c)(8) (Supp. II 1984); the new elements clause made "force" the centerpiece of its expanded definition of a "violent felony," 18 U.S.C. 924(e)(2)(B)(i). That symmetry suggests that Congress incorporated the common-law robbery definition of "force" into the design of the elements clause. See *Hall* v. *Hall*, 138 S. Ct. 1118, 1128 (2018) ("[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.") (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)); *Samantar* v. *Yousuf*, 560 U.S. 305, 320 n.13 (2010) ("Congress 'is understood to legislate against a background of common-law ... principles.'") (citation omitted); 1981 Senate Report 668, 671 (explaining that the definition of robbery in the original version of the ACCA was drawn from the common law).

Common-law robbery provided a ready-made framework for distinguishing violent from non-violent felonies. The common law regarded the force necessary to commit robbery as "violence." 2 Joel Prentiss Bishop, *Bishop on Criminal Law* § 1156, at 860-861 (9th ed. 1923) (Bishop); see 2 William Oldnall Russell, *A Treatise on Crimes and Indictable Misdemeanors* 68 (2d ed. 1828); 2 Francis Wharton, *A Treatise on Criminal Law* § 1093, at 1304 (11th ed. 1912) (Wharton). Unlike common-law battery (at issue in *Johnson*), common-law robbery could not be committed through negligible forms of "force" like unwanted touching, but instead required force "[s]ufficient * * * to overcome resistance." William L. Clark & William L. Marshall, *A Treatise on the*

Law of Crimes 553 (2d ed. 1905) (Clark & Marshall); see Wharton § 1089, at 1297-1298; Bishop § 1156, at 860-861; see also *Johnson*, 559 U.S. at 139 (distinguishing definition of force that included "a violent act directed against a robbery victim" from slight force sufficient for common-law battery) (citation omitted). Generalizing that approach through the elements clause would thus achieve Congress's goal of expanding the universe of ACCA predicates to include "all State and Federal felonies * * * involving physical force against a person," including "murder, rape, [and] assault"—as well as "robbery." 1986 House Report 4; see *id.* at 3 (explaining that the elements clause "would include such felonies involving physical force against a person * * * as murder, rape, assault, *robbery*, etc.") (emphasis added).[1]

4. Construing "physical force" under the ACCA to require even more violence than was necessary for common-law robbery crimes like Florida's would not only unmoor the elements clause from any relevant preexisting legal framework, but would also exclude from its scope the basic robbery-by-force crime of nearly every State at the time of the clause's enactment.

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[1] In *Johnson*, the government argued that the ACCA's elements clause was modeled on 18 U.S.C. 16(a) and thus encompassed simple battery, an offense mentioned in the legislative history of Section 16(a). U.S. Br. at 32-35, *Johnson*, *supra* (No. 08-6925). The Court in *Johnson*, however, rejected the government's argument that "the term 'force' in [the ACCA's elements clause] has the specialized meaning that it bore in the common-law definition of battery," 559 U.S. at 139, which the Court emphasized was "a misdemeanor, not a felony," at common law, *id.* at 141. As discussed in the text, the most evident source of a felony-focused definition of "physical force" was common-law robbery, which (unlike battery) was a felony. See Clark & Marshall 548 ("Robbery * * * is one of the common-law felonies.").

In 1986, when the elements clause was adopted, only five States had basic robbery-by-force offenses that would categorically require more force than Florida's. See App., *infra*, 28a. Nothing supports an interpretation of the elements clause, which was part of an amendment that *expanded* the scope of the ACCA beyond just "robbery or burglary," *Taylor*, 495 U.S. at 582, to in fact have drastically *narrowed* its application to robbery offenses. Cf. *Voisine* v. *United States*, 136 S. Ct. 2272, 2280-2281 (2016) (declining to construe 18 U.S.C. 921(a)(33)(A) in such a way as would "jeopardize" 18 U.S.C. 922(g)'s "force" in 34 States plus the District of Columbia); *United States* v. *Castleman*, 134 S. Ct. 1405, 1413 (2014) (declining to construe Section 921(a)(33)(A) in such a way as would render Section 922(g) "ineffectual in at least 10 States").

A uniquely restrictive ad hoc definition of "physical force" would have excluded not only most States' basic robbery-by-force offenses, but other paradigmatically violent crimes as well. For example, a standard of "force overcoming a victim's resistance" was also sometimes used to define forms of rape or sexual abuse. See, *e.g.*, *Moore* v. *State*, 502 So. 2d 819, 821 n.1 (Ala. 1986); *State* v. *LaMere*, 655 P.2d 46, 48 n.1 (Idaho 1982); *State* v. *Irving*, 601 P.2d 954, 955 n.1 (Wash. Ct. App. 1979). In the State of Washington, for instance, an element of first- and second-degree rape was "forcible compulsion," which was defined as "physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury" or of "be[ing] kidnapped." *Irving*, 601 P.2d at 955 n.1 (citation omitted). Congress would necessarily have understood the force inherent in such a rape offense as "physical force" for purposes of the ACCA's elements clause.

And the historical backdrop makes Congress's similar understanding as to such force in the context of robbery even clearer.

B. Petitioner's Narrowing Constructions Of "Physical Force" Cannot Be Squared With *Johnson*

In advocating a limiting construction of the ACCA's elements clause that would eliminate Florida robbery and similar offenses as ACCA predicates, petitioner effectively asks this Court to rewrite its decision in *Johnson*. Petitioner acknowledges (*e.g.*, Br. 4, 11) that *Johnson* defined "physical force" in the ACCA's elements clause to mean "force capable of causing physical pain or injury to another person." 559 U.S. at 140; see *Dimaya*, 138 S. Ct. at 1220. But the thrust of his argument (Br. 22-25) is that the Court should essentially abandon that definition. He provides no sound reason for this Court to do so.

1. *Johnson*'s definition of "physical force" in terms of its "capab[ility]" to cause pain or injury, 559 U.S. at 140, reflects the elements clause's focus on the criminal acts themselves, rather than their result. The elements clause applies to offenses that have the "use * * * of physical force against the person of another" as an element, 18 U.S.C. 924(e)(2)(B)(i), irrespective of whether the offense requires the actual causation of pain or bodily injury. Because force that *does* cause harm is necessarily *capable* of causing harm, an offense's inclusion of a causation requirement may in itself be sufficient to show that the crime requires the "use of physical force." See *Castleman*, 134 S. Ct. at 1416-1417 (Scalia, J., concurring in part and concurring in the judgment) ("[I]t is impossible to cause bodily injury without using force 'capable of' producing that result."). But as *Johnson*

recognized, the ACCA's reference to the "use of physical force" focuses on the capability of the force to cause such harm, irrespective of the outcome. A boxer, for example, engages in the "use of physical force" when he throws a punch, even if his opponent is skillful enough to deflect it without suffering pain or injury.

Petitioner errs in arguing (Br. 12, 22-25) that the operative language from *Johnson* would be "limitless" unless it is reformulated. Even if "all force is potentially capable of causing pain or injury in some situations," Pet. Br. 12 (emphasis omitted), the question is whether such capability is an "element" of the crime at issue, 18 U.S.C. 924(e)(2)(B)(i); see *Johnson*, 559 U.S. at 137 (focusing on the force inherent in "the least of the[] acts" that would suffice for conviction of the offense). Thus, in *Johnson* itself, the Court found that a battery offense that could be committed through "*any* intentional physical contact" with an unwilling person, "'no matter how slight,'" did not categorically require the "'physical force'" contemplated by the elements clause. 559 U.S. at 138 (citations omitted); see *id.* at 136, 145. The outcome could be different, however, for an offense with a narrower force element—*e.g.*, one that requires stronger physical contact, or that requires that the action in fact result in pain or injury. Cf. *Castleman*, 134 S. Ct. at 1413 (acknowledging that *Johnson* does not address the latter type of offense).[2]

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[2] As the Court recognized in *Castleman*, which addressed 18 U.S.C. 921(a)(33)(A)'s definition of a "misdemeanor crime of domestic violence," the phrase "use * * * of physical force" does not limit the relevant "force" to the defendant's own physical acts, but instead includes "indirect" force as well. See 134 S. Ct. 1409, 1415. In a poisoning case, for example, the "'use of force' * * * is not the

The Florida robbery offense here contains the sort of limitations that were absent from the battery offense at issue in *Johnson*. Unlike that battery offense, Florida robbery cannot be committed through the "most 'nominal contact,' such as a 'tap on the shoulder without consent,'" *Johnson*, 559 U.S. at 138 (brackets, citation, and ellipsis omitted). Instead, it requires "force sufficient to overcome the victim's resistance." *Robinson*, 692 So. 2d at 887. That the definition in *Johnson* encompasses such force does not render it all-inclusive. A defendant who simply taps someone on the shoulder, in a context in which no pain or injury can result, does not employ "force capable of causing physical pain or injury to another person," *Johnson*, 559 U.S. at 140. A defendant who engages in a physical struggle to secure or retain possession of a stolen item, however, does. An offense that can be committed in the former manner is thus not a violent felony under the elements clause. But an offense that categorically requires the latter is.

2. Petitioner's suggestion that the Court deviate from *Johnson*'s definition of "physical force," and hold that Florida robbery is not an ACCA predicate, is unsound.

Petitioner first highlights (Br. 22) *Johnson*'s observation that "[e]ven by itself, the word 'violent,'" in the

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act of 'sprinkling' the poison; it is the act of employing poison knowingly to cause physical harm." *Id.* at 1415 (brackets omitted). Likewise, when a defendant shoots someone with a gun, the requisite force occurs not when the defendant "pull[s] the trigger," but when the bullet "actually strikes the victim." *Ibid.* Every regional court of appeals (except for one that is currently considering the issue en banc) has applied that logic beyond the context of Section 921(a)(33)(A) itself. See Br. in Opp. at 9-11 & n.2, *Rodriguez* v. *United States*, No. 17-8881 (July 11, 2018).

context of defining the phrase "*violent* felony," "connotes a substantial degree of force," 559 U.S. at 140. That observation, however, was an explanation of, not a substitute for, the Court's definition of "physical force" as "force capable of causing physical pain or injury to another person." *Ibid.* That definition elucidates how "substantial" the force must be. *Ibid.* Replacing the more precise definition with one that turns on the word "substantial" alone would produce unwarranted indeterminacy in the application of the ACCA. And it would not even make a difference here, as nothing suggests that the force inherent in Florida robbery is insubstantial.

Petitioner next suggests (Br. 23) that "physical force" under the elements clause should "mean a degree of force reasonably expected to cause pain or injury." The Court in *Johnson*, however, was well aware of that possible formulation, see 559 U.S. at 143, because Congress used similar language in a nearby statutory provision, 18 U.S.C. 922(g)(8)(C)(ii). The Court's decision to provide a different formulation for the definition of "physical force" under the elements clause was presumably intentional. As petitioner points out, *Johnson* declined to hold that Congress *itself* necessarily intended all differences in language between the elements clause and Section 922(g)(8)(C)(ii) as differences in meaning. See 559 U.S. at 143. But unlike Congress, the Court in *Johnson* had the "reasonably * * * expected" language in front of it and decided not to use it. *Ibid.* (noting that the "reasonably * * * expected" language postdated the elements clause by eight years) (citation omitted). In any event, a distinction between "capable" and "reasonably expected" is not clearly implicated by the Florida robbery offense at issue here, which requires a physical struggle that could reasonably be expected to

cause pain or injury, even if it does not have that result in every case.

Finally, petitioner contends (Br. 24-25) that *Johnson* implicitly adopted a definition of "physical force" from the Seventh Circuit's decision in *Flores* v. *Ashcroft*, 350 F.3d 666 (2003), which was cited approvingly in *Johnson*, 559 U.S. at 140. In particular, he reads *Johnson* to have silently incorporated *Flores*'s suggestion that "[t]he way" to "avoid collapsing the distinction between violent and non-violent offenses" is to "insist that the force be violent in nature—the sort that is intended to cause bodily injury, or at a minimum likely to do so." *Flores*, 350 F.3d at 672. But the Court in *Johnson* did not repeat that statement or otherwise "endors[e] that dividing line," Pet. Br. 25. Instead, as the Court recognized last Term, *Johnson* "made clear that 'physical force' means 'force capable of causing physical pain or injury.'" *Dimaya*, 138 S. Ct. at 1220 (quoting *Johnson*, 559 U.S. at 140). Accordingly, since *Johnson*, the Seventh Circuit itself has applied *Johnson*'s test, not *Flores*'s. See *Douglas* v. *United States*, 858 F.3d 1069, 1071 (opinion by author of *Flores* recognizing that *Johnson*'s definition is controlling), cert. denied, 138 S. Ct. 565 (2017).

The definition found in *Flores* is flawed in any event. By defining "physical force" partly in terms of whether "bodily injury" was "intended," *Flores* makes relevant the defendant's *mens rea*. 350 F.3d at 672. In construing the phrase "use * * * of physical force" in similar statutes, however, this Court has made clear that it is the word "use," not "physical force," that may require an inquiry into *mens rea*. See *Voisine*, 136 S. Ct. at 2279 (concluding that the word "use" in 18 U.S.C. 921(a)(33)(A) is "indifferent as to whether the actor has the mental

state of intention, knowledge, or recklessness with respect to the harmful consequences of his volitional conduct"); *Leocal* v. *Ashcroft*, 543 U.S. 1, 9 (2004) (concluding that the word "use," within the context of 18 U.S.C. 16(a), "most naturally suggests a higher degree of intent than negligent or merely accidental conduct"). And this Court has expressly declined to construe the word "use" in a similar context to apply only to "intentional" behavior. *Voisine*, 136 S. Ct. at 2278-2279. *Flores* thus erred in making the defendant's intent a part of the definition of "physical force."

Although *Flores* also provided a somewhat more objective backstop to its formulation—requiring that the force "at a minimum" be "likely" to "cause bodily injury," 350 F.3d at 672—that fallback definition does not help petitioner. To the extent that the Court in *Johnson* was focused on that language, the different language that the Court itself employed—which uses the term "capable" rather than "likely," and includes "pain" as well as "injury," 559 U.S. at 140—is either a more detailed version of *Flores*'s formulation or else a deliberate modification of it. Either way, *Johnson* cannot be read as preferring the Seventh Circuit's terminology, or substantive approach, to its own.

3. To the extent that petitioner relies (Br. 26) on this Court's subsequent decision in *United States* v. *Castleman*, *supra*, to support a narrowing construction of *Johnson*, that reliance is misplaced.

Castleman addressed the application of 18 U.S.C. 921(a)(33)(A)'s definition of "misdemeanor crime of domestic violence," which employs terminology similar to the ACCA's elements clause. See *Castleman*, 134 S. Ct. at 1409. In construing that provision, the Court noted

the possibility that "[m]inor uses of force may not constitute 'violence' in the generic sense" and observed that the Seventh Circuit in *Flores* had considered "'a squeeze of the arm that causes a bruise'" to be "'hard to describe as violence.'" *Id.* at 1412 (quoting *Flores*, 350 F.3d at 670) (brackets, ellipsis, and internal quotation marks omitted). But the Court expressly declined to decide whether "'a cut, abrasion, [or] bruise'" would "necessitate violent force, under *Johnson*'s definition of that phrase." *Id.* at 1414 (citation omitted); see *id.* at 1413 (explaining that "[w]hether or not the causation of bodily injury necessarily entails violent force" is "a question we do not reach").

In fact, the only Justice in *Castleman* who did address that question recognized that such circumstances *would* require "physical force" within the meaning of *Johnson*. 134 S. Ct. at 1416-1417 (Scalia, J., concurring in part and concurring in the judgment). Justice Scalia, who treated the elements clause and Section 921(a)(33)(A) congruently, rejected the contention that "one can inflict all sorts of minor injuries—bruises, paper cuts, etc.—by engaging in *nonviolent* behavior." *Id.* at 1417. Under *Johnson*, he explained, "physical force" means "force capable of causing physical pain or injury, serious or otherwise." *Ibid.* And he reasoned that because "'hitting, slapping, shoving, grabbing, pinching, biting, and hair pulling'" are all "capable of causing physical pain or injury," they all qualify as "physical force" under *Johnson*. *Id.* at 1421 (brackets and citation omitted); see *id.* at 1421 n.9 (explaining that "'*painful* pinching or squeezing'" satisfies "*Johnson*'s definition of 'physical force'") (citation omitted).

4. At bottom, petitioner's reinterpretation of "physical force" has little, beyond narrowness, to recommend

it. Petitioner does not purport to ground it in the text or history of the ACCA, but instead offers (Br. 41-44) only the assertion that Florida robbery does not involve the type of conduct that one "normally" associates with "armed career criminals." Br. 43 (citation and internal quotation marks omitted). That assertion, however, cannot be squared with the substantial evidence that Congress in fact viewed robbery—and, in particular, robbery the way Florida defines it—as the paradigmatic elements-clause offense. See pp. 14-18, *supra*. Petitioner does not take the view that the force required for Florida's robbery offense is unusually minor relative to other States' robbery offenses, and he provides no explanation for why the elements clause would exclude all but a handful of state non-aggravated robbery-by-force offenses. Nor does he clearly explain which crimes he *does* think would be covered, or when the ACCA's force definition would in fact be satisfied.

A construction of the elements clause that accords with the line that the common law has long drawn between the minimal and nonviolent force required for larceny or theft, and the violent force necessary for robbery, rests on a solid legal foundation. It is consistent with *Johnson*, grounded in common law of which Congress would presumably have been aware, and readily administrable. See pp. 11-18, 20-22, *supra*. Petitioner's underdeveloped alternatives have none of those virtues, and the difficulties of application would be acute. For example, petitioner acknowledges (Br. 12) that "a slap in the face might involve '*violent* force,'" but argues (Br. 14) that a "bruising squeeze of the arm" would not. Thus, in his view, "the dividing line between violent and non-violent 'force' lies somewhere between a slap to the face and a bruising squeeze of the arm." Cert. Reply

Br. 14. He fails to specify where, and it is difficult to imagine a form of words that could.

Requiring courts to ask whether something is more like a "slap" or more like a "squeeze" is unlikely to yield determinate results. And layering on adjectives, such as whether the degree of force is "minor" as opposed to "substantial," is unlikely to achieve consistency in judicial decisionmaking. The far better approach—as illustrated by Justice Scalia's straightforward application of *Johnson* to a wide range of scenarios in *Castleman*—is the one that the Court has already adopted. See 134 S. Ct. at 1417 (Scalia, J., concurring in part and concurring in the judgment); see *id.* at 1421 & n.9. The Court should adhere to it.

C. This Court Should Not Adopt Petitioner's Expansive Interpretation Of Florida Robbery

Petitioner's argument in this case rests not only on a narrow construction of the ACCA's elements clause, but also a broad construction of the Florida robbery offense underlying his prior conviction. But any disagreement that petitioner may have with the lower courts' interpretation of Florida law does not warrant this Court's review. The Supreme Court of Florida has the definitive role in interpreting that State's robbery offense, see *Johnson*, 559 U.S. at 138, and this Court has a "settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law," *Bowen* v. *Massachusetts*, 487 U.S. 879, 908 (1988); see also, *e.g.*, *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 16 (2004). Petitioner provides no reason to deviate from that practice in this case, so unless petitioner can identify an error in the lower courts' interpretation of the ACCA's elements clause, this Court should affirm the judgment below.

In any event, none of petitioner's state-law arguments undercuts the court of appeals' determination that Florida robbery's requirement of "'resistance by the victim that is overcome by the physical force of the offender'" "satisfies the elements clause." J.A. 31 (quoting *Robinson*, 692 So. 2d at 886).

1. Petitioner argues (Br. 35) that "the degree of force necessary to overcome resistance" in a Florida robbery crime may itself be "slight" where the resistance is "slight." He points specifically (Br. 34-36) to three cases in which a defendant was convicted of Florida robbery for grabbing money out of a victim's hand. In each of the cases on which petitioner relies, however, the evidence showed that the defendant used force capable of causing physical pain or injury.

In *Sanders* v. *State*, 769 So. 2d 506 (Fla. Dist. Ct. App. 2000), the victim was "clutching * * * his bills in his fist" when the defendant "grabbed [the victim's] fingers" and "peel[ed] [them] back in order to get the money." *Id.* at 507. "Pr[ying] open" someone's fingers "with force" sufficient to overcome his efforts to keep hold of an object, *ibid.*, involves no less force than a slap to the face, *Johnson*, 559 U.S. at 143, and is just as capable of inflicting pain.

Similarly, in *Johnson* v. *State*, 612 So. 2d 689 (Fla. Dist. Ct. App. 1993), the victim was holding cash in her "closed right fist" when the defendant "reached across her shoulder, 'raked' her hand and grabbed the money," "tear[ing] a scab off [the victim's] finger" in the process. *Id.* at 690. The defendant thus "cause[d] slight injury to [the victim's] hand." *Id.* at 691. The resulting injury confirms that the force used was "'capable of' producing that result," *Castleman*, 134 S. Ct. at 1417 (Scalia, J., concurring in part and concurring in the judgment).

Finally, in *State* v. *Dawkins*, the arrest affidavit stated that the victim was holding bills in her hand when the defendant grabbed them; the victim resisted by pulling back and refusing to let go of the money; and one of the bills was torn apart during the ensuing struggle. Pet. Br. App. 8a. Petitioner does not identify any judicial decision finding the facts set forth in that affidavit sufficient to establish robbery by force or violence under Florida law. But even assuming those facts reflect the complete factual basis for the defendant's plea to that offense, they do not illustrate that Florida robbery can be committed without the use of physical force. Force sufficient to wrench paper money from a victim's clutches (or to tear it) is not "slight," *Johnson*, 559 U.S. at 138 (citation omitted), but is instead "capable of causing physical pain or injury," *id.* at 140, in the course of the tug-of-war. See, *e.g.*, *Benitez-Saldana*, 67 So. 3d at 322 (injury in tug-of-war over purse).[3]

Florida courts have differentiated the force involved in wresting something from the grasp of an unrelenting victim—at issue in all three cases on which petitioner relies—from the minimal force involved in a simple snatching. In *Goldsmith* v. *State*, 573 So. 2d 445 (Fla. Dist. Ct. App. 1991), for example, the defendant "snatched a ten-dollar bill from [the victim's] hand and ran." *Id.* at 445. The court held that "[t]he slight force

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[3] To the extent that petitioner focuses (Br. 34) on the absence of direct physical contact between the defendant and the victim, he fails to explain why such contact is necessary to constitute the "use of physical force." See *Castleman*, 134 S. Ct. at 1415; p. 21 n.2, *supra*. Such contact is not a prerequisite to applying physical force directly (as by hitting the victim with a bat) or "indirectly" (as by "pulling the trigger on a gun"). *Castleman*, 134 S. Ct. at 1415. Indeed, if "touch[ing] the victim" were required, Pet. Br. 34, "physical force" would not even encompass shooting the victim.

used by [the defendant] to remove the bill from [the victim's] hand [wa]s *insufficient* to constitute the crime of robbery." *Ibid.* (emphasis added). Petitioner thus errs in asserting that Florida's robbery statute "can be violated by even the slightest use of force," Pet. Br. 33, and that its "force" element fails to distinguish "'violent'" offenses from "non-violent" ones, *id.* at 36 (quoting *United States* v. *Geozos*, 870 F.3d 890, 900 (9th Cir. 2017)).

2. Petitioner separately observes (Br. 27) that although Florida's robbery statute requires that the "use of force" occur "in the course of the taking," the statute was amended in 1987 to provide that "[a]n act shall be deemed 'in the course of the taking'" even if it occurs "subsequent to the taking of the property," so long as "it and the act of taking constitute a continuous series of acts or events." Fla. Stat. § 812.13(1) and (3)(b) (1995). Thus, under the law at the time of petitioner's offense (as well as today), a defendant who used "force" in fleeing with stolen property would be guilty of robbery under Section 812.13. See *Rockmore* v. *State*, 140 So. 3d 979, 982 (Fla. 2014). In that respect, Florida's robbery statute is an extension of the traditional common-law rule, which required that the force "occur prior to or contemporaneous with the taking of property." *Royal* v. *State*, 490 So. 2d 44, 45 (Fla. 1986), superseded by statute as recognized in *Robinson*, 692 So. 2d at 886 n.9.

The timing of the force, however, is irrelevant to the application of the ACCA's elements clause. All that matters is that the "use * * * of physical force" is an "element" of the state offense, without regard to its temporal proximity to other offense elements. 18 U.S.C. 924(e)(2)(B)(i). And the force required for a post-taking

struggle in a Florida robbery offense is the same as the force required for a struggle that is contemporaneous with the taking—namely, "force sufficient to overcome a victim's resistance." *Robinson*, 692 So. 2d at 887; see, *e.g.*, *Rumph*, 544 So. 2d at 1151 (defendant "push[ed] [the victim] out of the way as he bolted through the front door").[4] Thus, to the extent that petitioner contends (Br. 38-39, 42-43) that Florida's robbery statute is overbroad because the "use of force" may occur subsequent to the taking, that contention is mistaken.

3. Petitioner asserts (Br. 37-41) that the government has "acknowledged" that other States' robbery laws—which he contends are "materially indistinguishable from" or require "more forc[e]" than Florida's—do not satisfy the ACCA's elements clause. That assertion is mistaken.

In its brief in opposition, the government observed that "[s]ome courts of appeals have determined that a State's definition of robbery does not satisfy the ACCA's elements clause." Br. in Opp. 14. The government argued, however, that those decisions did not reflect "any disagreement" with the court of appeals in this case "about the meaning of 'physical force' under *Johnson*"; rather, the government contended, the other courts of appeals had "understood" other States' robbery laws to require a lesser degree of force than Florida's. *Ibid.*

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[4] Contrary to petitioner's contention (Br. 33-34), *Colby* v. *State*, *supra*, does not suggest that only minimal force is necessary for a Florida robbery conviction in circumstances involving an escape. The victim in that case had "caught the [perpetrator's] arm or hand" and had "held it," leading to "a struggle" "in which the parties clinched." *Colby*, 35 So. at 190 (noting a policeman's account that the parties "appeared to be tussling with each other"). Prevailing in such a "tussling or clinching" with another person, *ibid.*, requires using force at least equivalent to a slap in the face.

For example, the government explained that the Sixth Circuit in *United States* v. *Yates*, 866 F.3d 723 (2017), had "understood Ohio law to require only * * * 'the force inherent in a purse-snatching incident,'" Br. in Opp. 14-15 (quoting *Yates*, 866 F.3d at 732); see also *id.* at 14 (discussing the Fourth Circuit's interpretation of state law in *United States* v. *Gardner*, 823 F.3d 793 (2016), and *United States* v. *Winston*, 850 F.3d 677 (2017)). In Florida, by contrast, the force inherent in such a "sudden snatching" would not be sufficient under Section 812.13. *Robinson*, 692 So. 2d at 887. The government thus argued (Br. in Opp. 14) that "differences in how States define robbery," as "understood" by those courts of appeals, explained why robbery had been deemed a "violent felony" in some States but not in others.

Contrary to petitioner's contention (Br. 37), however, the government did not (and does not) acknowledge that the courts of appeals in those cases all interpreted state law correctly or reached the correct result. A robbery offense like Florida's, which tracks the common-law distinction between violent force and the lesser force required for theft or larceny, is a violent felony under the ACCA.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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AUGUST 2018

APPENDIX A

1. 18 U.S.C. 924 provides:

Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (*o*) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party,

other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(*l*), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951

et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the

same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

2. Fla. Stat. § 812.13 (1995) provides:

Robbery.—

(1) "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

(2)(a) If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084

(b) If in the course of committing the robbery the offender carried a weapon, then the robbery is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If in the course of committing the robbery the offender carried no firearm, deadly weapon, or other

weapon, then the robbery is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) An act shall be deemed "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

APPENDIX B

State Non-Aggravated Robbery-by-Force Offenses at the Time of 18 U.S.C. 924(e)(2)(B)(i)'s Enactment (Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39)

States adhering to the common-law definition of force (*i.e.*, force overcoming a victim's resistance) or similar definition:

Alabama: Ala. Code § 13A-8-43(a)(1) (1982) (defining robbery as involving the "[u]se[]" of "force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance").

Alaska: Alaska Stat. § 11.41.510(a)(1) (1983) (defining robbery as involving the "use[]" of "force" "with intent to * * * prevent or overcome resistance to the taking of the property or the retention of the property after taking"); *id.* § 11.81.900(a)(22) (Supp. 1986) (defining "force" as "any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement").

Arizona: Ariz. Rev. Stat. Ann. § 13-1902(A) (1978) (defining robbery as involving the "use[]" of "force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property"); *Lear* v. *State*, 6 P.2d 426, 427 (Ariz. 1931) ("[T]he force used must be either before, or at the time of the taking, and must be of such a nature as to shew that it was intended to overpower the party

robbed, and prevent his resisting, and not merely to get possession of the property stolen.") (citation omitted).

Arkansas: Ark. Stat. § 41-2103(1) (1977) (defining robbery as involving the "employ[ment]" of "physical force upon another"); see *id.* § 41-2101 (defining "[p]hysical force" as (1) "bodily impact, restraint, or confinement," or (2) "threat thereof"); *Parker* v. *State*, 529 S.W.2d 860, 863 (Ark. 1975) ("[T]he mere snatching of money or goods from the hand of another is not robbery, unless some injury is done to the person or there be some struggle for possession of the property prior to the actual taking or some force used in order to take it.").

California: Cal. Penal Code § 211 (West 1970) (defining robbery as involving "means of force"); *People* v. *Burns*, 92 Cal. Rptr. 3d 51, 56 (Cal. Ct. App. 2009) ("All the force that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim's resistance.") (citation omitted); *People* v. *Morales*, 122 Cal. Rptr. 157, 160 (Cal. Ct. App. 1975) ("[I]t is established that something more is required than just that quantum of force which is necessary to accomplish the mere seizing of the property.").

Colorado: Colo. Rev. Stat. § 18-4-301(1) (1986) (defining robbery as involving the "use of force"); *People* v. *Borghesi*, 66 P.3d 93, 99 (Colo. 2003) (en banc) ("[T]here is no indication that the legislature has departed from the usual and customary meaning of any of the common law terms.").

Connecticut: Conn. Gen. Stat. Ann. § 53a-133 (West 1985) (defining robbery as involving the "use[]" of "physical force upon another person for the purpose of * * * [p]reventing or overcoming resistance to the taking of

the property or to the retention thereof immediately after the taking").

Delaware: Del. Code Ann. tit. 11, § 831(a)(1) (Supp. 1986) (defining robbery as involving the "use[]" of "force upon another person with intent to * * * [p]revent or overcome resistance to the taking of the property or to the retention thereof immediately after the taking").

Florida: Fla. Stat. § 812.13(1) (1985) (defining robbery as involving "force" or "violence"); *Robinson* v. *State*, 692 So. 2d 883, 887 (Fla. 1997) ("[I]n a snatching situation in Florida, force sufficient to overcome a victim's resistance is necessary to establish robbery."); *Montsdoca* v. *State*, 93 So. 157, 159 (Fla. 1922) ("All the force that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim's resistance.").

Georgia: Ga. Code Ann. § 16-8-40(a)(1) (Michie 1984) (defining robbery as involving the "use of force"); *Franklin* v. *State*, 648 S.E.2d 746, 748 (Ga. Ct. App. 2007) ("Force, in the sense in which it is used in defining the offense of robbery by this method, consists in personal violence or that degree of force that is necessary to remove articles so attached to the person or clothing as to create resistance, however slight.") (quoting *Henderson* v. *State*, 70 S.E.2d 713, 714 (Ga. 1952)) (brackets omitted).

Hawaii: Haw. Rev. Stat. § 708-841(1)(a) (Supp. 1986) (defining robbery as involving the "use[]" of "force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance").

Idaho: Idaho Code § 18-6501 (1979) (defining robbery as involving "means of force"); *State* v. *Olin*, 725 P.2d

801, 804 (Idaho Ct. App. 1986) (explaining that Idaho's robbery statute is "subject to the general rule that common law terminology will be given its common law meaning, unless a contrary legislative intent appears"), appeal denied, 735 P.2d 984 (Idaho 1987) (per curiam).

Illinois: Ill. Rev. Stat. ch. 38, para. 18-1(a) (1985) (defining robbery as involving the "use of force"); *People* v. *Bowel*, 488 N.E.2d 995, 997 (Ill. 1986) ("[T]he degree of force necessary to constitute robbery must be such that the power of the owner to retain his property is overcome, either by actual violence physically applied, or by putting him in such fear as to overpower his will.") (citation omitted; brackets in original).

Indiana: Ind. Code. § 35-42-5-1(1)(1) (Supp. 1986) (defining robbery as involving the "us[e]" of "force on any person"); *Maul* v. *State*, 467 N.E.2d 1197, 1199 (Ind. 1984) ("We have held that the degree of force used to constitute the crime of robbery has to be a greater degree of force than would be necessary to take possession of the victim's property if no resistance was offered and that there must be enough force to constitute violence.").

Kansas: Kan. Stat. Ann. § 21-3426 (1981) (defining robbery as involving "force"); *State* v. *Aldershof*, 556 P.2d 371, 375 (Kan. 1976) ("[R]obbery is not committed where the thief has gained peaceable possession of the property.").

Kentucky: Ky. Rev. Stat. Ann. § 515.030(1) (Michie 1985) (defining robbery as involving the "use[]" of "physical force upon another person"); see *id.* § 515.010 (defining "[p]hysical force" as "force used upon or directed toward the body of another person"); *Bumphis* v. *Commonwealth*, 235 S.W.3d 562, 565 (Ky. Ct. App. 2007)

("[A] charge of robbery is established when a defendant, in the course of committing a theft, exercises or threatens physical force * * * in an effort to prevent or otherwise overcome resistance exerted by the victim."), overruled on other grounds by *Hobson* v. *Commonwealth*, 306 S.W.3d 478 (Ky. 2010).

Louisiana: La. Rev. Stat. Ann. § 14:65(A) (West 1986) (defining robbery as involving the "use of force"); *State* v. *Leblanc*, 506 So. 2d 1197, 1200 (La. 1987) ("[T]he crime of robbery contemplates that some energy or physical effort will be exerted in the 'taking' element of the crime and that some additional 'use of force' in overcoming the will or resistance of the victim is necessary to distinguish the crime of robbery from the less serious crime of theft, as defined by La.R.S. 14:67.").

Maine: Me. Rev. Stat. Ann. tit. 17-A, § 651(1)(B)-(C) (West 1983) (defining robbery as involving the "use" of "physical force on another" with "the intent" to "prevent or overcome resistance to the taking of the property, or to the retention of the property immediately after the taking," or to "compel the person in control of the property to give it up or to engage in other conduct which aids in the taking or carrying away of the property").

Maryland: *Williams* v. *State*, 490 A.2d 1277, 1280 (Md. 1985) ("Robbery is a common law offense in Maryland and * * * is defined as the felonious taking and carrying away of the personal property of another from his person by the use of violence or by putting in fear."); *Cooper* v. *State*, 265 A.2d 569, 571 (Md. Ct. Spec. App. 1970) ("[S]ufficient force must be used to overcome resistance.").

Michigan: Mich. Comp. Laws § 750.530 (1981) (defining robbery as involving "force and violence"); *People* v. *Randolph*, 648 N.W.2d 164, 167 (Mich. 2002) ("Michigan's unarmed robbery statute is derived from the common law."), superseded by statute as recognized in *People* v. *March*, 886 N.W.2d 396, 404 n.5 (Mich. 2016).

Minnesota: Minn. Stat. § 609.24 (1986) (defining robbery as involving the "use[] of "force against any person to overcome the person's resistance or powers of resistance").

Mississippi: Miss. Code Ann. § 97-3-73 (1973) (defining robbery as involving "violence"); *Chaney* v. *State*, 739 So. 2d 416, 418 (Miss. Ct. App. 1999) (explaining that robbery "does not include stealth" and that "[p]ickpocket offenses are generally prosecuted under larceny statutes because of the lack of violence").

Missouri: Mo. Rev. Stat. § 569.030(1) (1986) (defining robbery as involving "forcibly steal[ing]"); see *id.* § 569.010(1) defining "[f]orcibly steals" to include "us[ing] * * * physical force upon another person for the purpose of * * * [p]reventing or overcoming resistance to the taking of the property") (emphasis omitted).

Nebraska: Neb. Rev. Stat. § 28-324(1) (1985) (defining robbery as involving a taking of property "forcibly and by violence"); *State* v. *Sutton*, 368 N.W.2d 492, 495 (Neb. 1985) ("The force relied upon must be sufficient to effect a transfer of the property from the victim to the robber, and if it is sufficient to overcome resistance, the degree is immaterial.").

Nevada: Nev. Rev. Stat. Ann. § 200.380(1) (Michie 1986) (defining robbery as involving "means of force or violence" to "obtain or retain possession of the property"

or "prevent or overcome resistance to the taking"); *Barkley* v. *State*, 958 P.2d 1218, 1219 (Nev. 1998) (per curiam) (concluding that an "unlawful taking became a robbery" when the defendant struck the victim "in the head with the bottle, thereby using force and violence to retain possession of the bottle").

New Hampshire: N.H. Rev. Stat. Ann. § 636:1(I)(a) (1986) (defining robbery as involving the "[u]se[] of "physical force on the person of another and such person is aware of such force"); *State* v. *Goodrum*, 455 A.2d 1067, 1068 (N.H. 1983) (per curiam) ("It is clear that a pickpocket who merely 'snatches' a wallet without using force of which the victim is aware has committed a theft but not a robbery.") (citation omitted).

New Jersey: N.J. Stat. Ann. § 2C:15-1(a)(1) (West 1982) (defining robbery as involving the "use[] of "force upon another"); *State* v. *Sein*, 590 A.2d 665, 668 (N.J. 1991) (holding that the "Legislature intended to adopt the majority rule" that "there is insufficient force to constitute robbery when the thief snatches property from the owner's grasp so suddenly that the owner cannot offer any resistance to the taking").

New Mexico: N.M. Stat. Ann. § 30-16-2 (Michie 1984) (defining robbery as involving "use * * * of force or violence"); *State* v. *Curley*, 939 P.2d 1103, 1105 (N.M. Ct. App. 1997) ("[W]hen property is attached to the person or clothing of a victim so as to cause resistance, any taking is a robbery, and not larceny, because the lever that causes the victim to part with the property is the force that is applied to break that resistance; however, when no more force is used than would be necessary to remove property from a person who does not resist, then the offense is larceny, and not robbery.").

New York: N.Y. Penal Law § 160.00(1) (McKinney 1975) (defining robbery as involving the "use[] of "physical force upon another person for the purpose of * * * [p]reventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking").

North Carolina: *State* v. *Smith*, 292 S.E.2d 264, 270 (N.C.) ("Common law robbery is the felonious, non-consensual taking of money or personal property from the person or presence of another by means of violence or fear."), cert. denied, 459 U.S. 1056 (1982); *State* v. *Robertson*, 531 S.E.2d 490, 493 (N.C. Ct. App. 2000) ("To constitute the crime of highway robbery, the force used must be either before or at the time of the taking, and must be of such a nature as to show that it was intended to overpower the party robbed or prevent his resisting, and not merely to get possession of the property stolen.") (quoting *State* v. *John*, 50 N.C. (5 Jones) 163, 169 (1857)) (per curiam) (emphasis omitted).

Ohio: Ohio Rev. Code Ann. § 2911.02(A) (Anderson Supp. 1985) (defining robbery as involving the "use" of "force against another"); see *id.* § 2901.01(A) (defining "[f]orce" as "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing"); *State* v. *Carter*, 504 N.E.2d 469, 470-471 (Ohio Ct. App. 1985) (explaining that the "type of force envisioned by the legislature * * * is that which poses actual or potential harm to a person," while finding it "unnecessary" to determine whether "a showing of resistance by the victim * * * is required"); *State* v. *Furlow*, 608 N.E.2d 1112, 1113-1114 (Ohio Ct. App. 1992) (explaining that "the force required for robbery re-

quires actual or potential harm" and reversing a robbery conviction for wallet-snatching that failed to satisfy that standard).

Oklahoma: Okla. Stat. tit. 21, § 792 (1982) (defining robbery as involving the "employ[ment]" of "force" "either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking"); *Snake* v. *State*, 453 P.2d 287, 290 (Okla. Crim. App. 1969) (explaining that Oklahoma's robbery statute does "not obviate the necessity of showing that force overcoming resistance was employed either in taking the property from the victim or retaining it"); *Ellis* v. *State*, 260 P. 93, 95 (Okla. Crim. App. 1927) ("Merely snatching the property from the person of another, without violence or putting in fear, is not robbery, except where there is some injury or violence to the person of the owner, or where the property snatched is so attached to the person or clothes of the owner as to afford resistance.") (citation omitted).

Oregon: Or. Rev. Stat. § 164.395(1)(a) (1985) (defining robbery as involving the "use[]" of "physical force upon another person with the intent of * * * [p]reventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking").

Pennsylvania: 18 Pa. Cons. Stat. Ann. § 3701(a)(1)(v) (1983) (defining robbery as involving "physically tak[ing] or remov[ing] property from the person of another by force however slight"). *Commonwealth* v. *Brown*, 484 A.2d 738, 741 (Pa. 1984) ("Any injury to the victim, or any struggle to obtain the property, or any resistance on his part which requires a greater counter attack to

effect the taking is sufficient."); *id.* at 742 (distinguishing the robber from "the pickpocket").

Rhode Island: R.I. Gen. Laws § 11-39-1 (1981) (prescribing penalties for robbery). *State* v. *Robertson*, 740 A.2d 330, 333 (R.I. 1999) ("This Court has long held that the statute incorporates the common-law definition of robbery. Under common law, robbery consists of the felonious and forcible taking from the person of another of goods or money to any value by violence or putting him in fear.") (citations and internal quotation marks omitted); *ibid.* (concluding that "a snatching involves sufficient force to support a conviction of robbery if the article taken is so attached to the person or the clothes of the victim as to afford resistance").

South Carolina: *State* v. *Drayton*, 361 S.E.2d 329, 335 (S.C. 1987) ("Robbery is defined as the felonious or unlawful taking of money, goods or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.") (citing *State* v. *Hiott*, 276 S.E.2d 163 (S.C. 1981)), cert. denied, 484 U.S. 1079 (1988); see *State* v. *Bland*, 457 S.E.2d 611, 612-613 (S.C. 1995) (distinguishing robbery from purse-snatching).

South Dakota: S.D. Codified Laws § 22-30-2 (1979) (defining robbery as involving the "employ[ment]" of "force" "to obtain or retain possession of the property or to prevent or overcome resistance to the taking"); *State* v. *Stecker*, 108 N.W.2d 47, 50 (S.D. 1961) ("The stealthy or secret taking of property from the person of another before the victim is aware of what is being done is not robbery.").

Tennessee: Tenn. Code Ann. § 39-2-501(a) (1982) (defining robbery as involving "violence"); *State* v. *Fitz*, 19 S.W.3d 213, 217 (Tenn. 2000) ("A theft of a wallet from the pocket or purse of an unknowing or unresisting victim, for example, may require 'compulsion by the use of physical power' but not violence.").

Utah: Utah Code Ann. § 76-6-301(1) (1978) (defining robbery as involving "means of force"); *State* v. *Germonto*, 868 P.2d 50, 56 (Utah 1993) (determining that the defendant applied force in hitting the victim with a wrench).

Virginia: *Pierce* v. *Commonwealth*, 138 S.E.2d 28, 31 (Va. 1964) (defining "[r]obbery at common law" as "the taking, with intent to steal, of the personal property of another, from his person or in his presence, against his will, by violence or intimidation"); *Maxwell* v. *Commonwealth*, 183 S.E. 452, 454 (Va. 1936) ("To constitute this offense, there must be (1) violence, but it need only be slight, for anything which calls out resistance is sufficient.") (citation omitted); *Winn* v. *Commonwealth*, 462 S.E.2d 911, 913 (Va. Ct. App. 1995) (holding that a purse-snatching was not robbery because the defendant used only "the force necessary to remove the purse from the victim's shoulder, not the force associated with violence against or resistance from the victim").

Washington: Wash. Rev. Code § 9A.56.190 (1985) (defining robbery as involving the "use * * * of immediate force" or "violence" to "obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial"); *State* v. *Austin*, 373 P.2d 137, 140 (Wash. 1962) (explaining that a jury instruction correctly stated the law in distinguishing robbery from

a "snatching or sudden taking * * * accomplished without force or violence") (citation omitted).

West Virginia: *State* v. *Harless*, 285 S.E.2d 461, 463-464 (W. Va. 1981) (adopting the common-law definition of robbery and explaining that, "at common law, robbery could be accomplished either by actual physical force or violence inflicted on the victim or by intimidating the victim by placing him in fear of bodily injury").

Wisconsin: Wis. Stat. Ann. § 943.32(1)(a) (West 1982) (defining robbery as involving the "us[e]" of "force against the person of the owner with intent thereby to overcome his physical resistance or physical power of resistance to the taking or carrying away of the property").

States defining force more broadly than the common law, to encompass simple purse-snatchings:

District of Columbia: D.C. Code Ann. § 22-2901 (1981) (defining robbery as involving "force or violence, whether against resistance or by sudden or stealthy seizure or snatching").

Iowa: Iowa Code § 711.1(1) (1985) (defining robbery as involving "an assault upon another"); see *id.* § 708.1(1) (defining assault as including any act "which is intended to result in physical contact which will be insulting or offensive to another").

Massachusetts: Mass. Gen. L. ch. 265, § 19(b) (1985) (defining robbery as involving "force and violence"); *Commonwealth* v. *Mora*, 77 N.E.3d 298, 306 (Mass. 2017) ("[T]he victim need not resist."); *Commonwealth* v. *Jones*, 283 N.E.2d 840, 845 (Mass. 1972) ("Snatching necessarily involves the exercise of some actual force.

* * * [W]here, as here, the actual force used is sufficient to produce awareness, although the action may be so swift as to leave the victim momentarily in a dazed condition, the requisite degree of force is present to make the crime robbery.").

States defining force more narrowly than the common law, to require causation of bodily injury:

Montana: Mont. Code Ann. § 45-5-401(1)(a) (1985) (defining robbery as involving the "inflict[ion]" of "bodily injury upon another").

North Dakota: N.D. Cent. Code § 12.1-22-01(1) (1985) (defining robbery as involving the "inflict[ion]" of "bodily injury upon another").

Texas: Tex. Penal Code Ann. § 29.02(a)(1) (West 1974) (defining robbery as involving the "caus[ation]" of "bodily injury to another").

Vermont: Vt. Stat. Ann. tit. 13, § 608(a) (1974) (defining robbery as involving "assault[]"); *id.* § 1023(a)(2) (defining assault as, *inter alia*, "caus[ing] bodily injury to another"); see *id.* § 1021(1) (defining "[b]odily injury" as "physical pain, illness or any impairment of physical condition").

Wyoming: Wyo. Stat. § 6-2-401(a)(i) (1983) (defining robbery as involving the "[i]nflict[ion]" of "bodily injury upon another").